IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9175 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HEIR OF DECEASED JETHABHAI BHANABHAI PATEL

Versus

COLLECTOR

Appearance:

1. Special Civil Application No. 9175 of 2002

MR HM PARIKH for Petitioner No. 1

MR HC PATEL ASSTT GOVERNMENT PLEADER for Respondent No. 1-2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 22/11/2002

ORAL JUDGEMENT

#. Heard learned advocate Mr.H.M.Parikh on behalf of the petitioner and learned AGP Mr.H.C.Patel appearing on behalf of the respondents.

#. Rule. With the consent of both the parties, present matter is taken up for final hearing today.

#. The brief facts giving rise to present petition are as under :-

The father of the petitioner had applied for N.A. Use of the land bearing Survey No.315 and 318 /1 of village Padara-1. The said permission was granted on 25th February, 1980 and 1st June, 1979 respectively. According tot he petitioner, due to adverse situation, the N.A.Use cannot be made of the land bearing Survey No.315 and therefore the application was filed by the petitioner on 7th September, 2001 for extension of time for the use of N.A.. According to the petitioner, the Mamlatdar, Padara and the respondent No.1 - Collector recommended in favour of the petitioner but since the permission was to be given by the Government, the State Government has refused the permission without assigning any reason. Thereafter the petitioner has filed another application dated 27th June, 2002 with a request to reconsider the application dated 7th September, 2001 but no response has been given by the respondent No.2 in respect of the application dated 27th June, 2002.

#. Learned advocate Mr.Parikh submitted that in response to application dated 7th September, 2001, the respondent No.2 has called upon the petitioner on 3rd April, 2002 in the office of the Secretary at Gandhinagar. That said letter was received by the petitioner on 9th April, 2002 but before that, the petitioner was aware about the date from the office of the Collector on 1st April, 2002. At the relevant time, there was communal riots in Ahmedabad, Baroda and Godhara cities and therefore the petitioner was not able to attend hearing fixed by the Secretary on 3rd April, 2002. Therefore, the petitioner has sent FAX message and also telephoned to the concerned Secretary that due to above circumstances, they are not able to attend the hearing. Inspite of this fact, the respondent No.2 has rejected the application which has been communicated to the petitioner through the Collector, Baroda vide letter dated 28th May, 2002. Learned advocate Mr.Parikh also submitted that order which has been communicated by the Collector, Baroda to the petitioner that his application dated 7th September, 2001 is rejected by the State Government but no reason has been assigned in the said order. He also submitted that the application dated 27th June, 2002 submitted by the petitioner to the Collector, Baroda for reconsideration of his earlier application dated 7th September, 2001, for

that also, there is no response.

#. Learned AGP Mr.H.C.Patel appearing on behalf of the respondents has submitted that the Government will consider the application of the petitioner for reconsideration dated 27th June, 2002 within some reasonable time.

#. In view of above facts, the order which has been communicated to the petitioner by the Collector, Baroda dated 28th May, 2002 wherein no reason has been assigned by the State Government or even by the Collector to the petitioner about rejection of his application dated 7th September, 2001. Therefore, it is clear that it is not a speaking order passed by the State Government for not to grant extension to the petitioner in response to his application dated 7th September, 2001. Therefore, the same being unreasoned order passed by the State Government rejecting extension application submitted by the petitioner and not to reconsider the matter of the petitioner as the petitioner was not able to attend hearing due to communal riots in Ahmedabad, Baroda and Godhara cities and therefore, considering these facts, according to my opinion, the order passed by the State Government upon the application dated 7th September, 2001 submitted by the petitioner requires to be quashed and set aside.

#. In the result, present petition deserves to be allowed and the same is allowed accordingly. The order passed by the State Government - Respondent No.2 in respect of application for extension dated 7th September, 2001 communicated by the Collector, Baroda by letter dated 28th May, 2002 is hereby quashed and set aside. It is directed to the respondents to reconsider the matter in light of the application submitted by the petitioner dated 27th June, 2002 in accordance with law within period of two months from the date of receiving the copy of this order. Rule is made absolute accordingly with no order as to costs. Direct Service is permitted.

Date : 22-11-2002 [H.K.Rathod, J.]

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